

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA

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In Re:) Case No. 8:23-bk-10898-TA
)
JEFFREY S. BEIER,) Chapter 7
)
Debtor.) Santa Ana, California
) Tuesday, 11:00 A.M.
-----X January 9, 2024

OBJECTION TO PROOF OF
CLAIM 2-1 FILED BY THE
BANK OF NEW YORK MELLON,
FKA THE BANK OF NEW YORK
SUCCESSOR TRUSTEE TO
JPMORGAN CHASE BANK, N.A.,
AS TRUSTEE FOR THE BEAR
STEARNS ALT-A TRUST,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-
04

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE THEODOR ALBERT
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: DAVID R. HABERBUSH, ESQ.
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Mortgage Pass-Through
5 Certificates, Series
2005-04

6 For the Chapter 7 WILLIAM G. MALCOLM, ESQ.
7 Trustee, A. Cisneros: Malcolm Cisneros, A Law
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1 SANTA ANA, CALIFORNIA, TUESDAY, JANUARY 9, 2024

2 11:02 A.M.

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4 THE COURT: #12.00 is the matter of Jeffrey
5 Beier. This is the debtor's objection to claim number 2.10
6 filed by Bank of New York Mellon.

7 Appearances, please.

8 MR. HABERBUSH: Your Honor, this is David
9 Haberbush on behalf of the debtor and objecting party.

10 MR. DELMOTTE: Good morning, Your Honor. Joe
11 Delmotte for the claimant, Bank of New York Mellon, the
12 Trustee.

13 MR. MALCOLM: And good morning, Your Honor.
14 William Malcolm for the Trustee and happy new year.

15 THE COURT: Yes, happy new year to all.

16 Okay. So I gave you a fairly extensive
17 tentative, I think. Mr. Haberbush, the conclusion is I'm
18 not impressed. I think the lien of the bank remains
19 attached to the proceeds. What I can't quite figure out is
20 whether all of the monies being held in that block account
21 are liened or only part of it and that's more a function of
22 arithmetic than anything else.

23 Can anybody fill me in on that part?

24 MR. HABERBUSH: Your Honor, this is David --

25 MR. MALCOLM: Go ahead.

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1 MR. HABERBUSH: This is David Haberbush on behalf
2 of the debtor. Your Honor, I can elucidate that. I think
3 that's an issue between the Trustee and the secured
4 creditor. I do have a couple of comments on the tentative
5 once we've disposed of this issue.

6 THE COURT: Sure. Let's get into it. Let's talk
7 about the tentative. How did I get it wrong?

8 MR. HABERBUSH: Very well, Your Honor. I think
9 there's a couple of things where there are issues. The
10 Court did note and the declaration of Jae Min does state
11 that the endorsement on the promissory note to JPMorgan
12 Chase Bank as Trustee was voided. It appears that the
13 Court concludes based upon the declaration of Jae Min that
14 the secured creditor here, Bank of New York Mellon, as
15 successor trustee to JPMorgan Chase, is the proper holder
16 of the note and deed of trust based upon paragraph 6, lines
17 24 through 27, of the declaration of Jae Min, which -- and
18 I will just read the pertinent part:

19 "BONY was in possession either directly or
20 through the use of an authorized agent and/or document
21 custodian of the endorsed blank note at the time Bank
22 of New York filed its proof of claim."

23 What is it, Your Honor? Is it that the bank held
24 the note or someone else held the note? This declaration
25 is not dispositive or definitive as to who held the note

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1 and how that note was held. It just says it was an
2 either/or situation, not a definitive statement.

3 Secondly, the note, according to the proof of
4 claim, is held by Bank of New York as successor to JPMorgan
5 Chase Bank as trust -- as a successor trustee. Yet, we
6 have nothing in the record showing how this creditor became
7 the successor to JPMorgan Chase Bank, the endorsee on the
8 note, which was voided.

9 So we have some missing links here, as far as I'm
10 concerned, Your Honor.

11 THE COURT: Okay. You may care to comment on
12 that and I have some comments I'd like to follow with, but
13 if anybody wants to intervene, I'd be glad to hear you.
14 Mr. Haberbush -- go ahead.

15 MR. DELMOTTE: I was just going to say, Your
16 Honor. Both our opposition and the Court's tentative
17 ruling pretty thoroughly analyzed this issue and assessing
18 (phonetic) to it and so we would be prepared to just submit
19 on the Court's tentative ruling. We think the declaration
20 clearly establishes that BONY is the noteholder. Whether
21 or not they're in direct possession or they're in
22 possession of the note endorsement by way of an authorized
23 agent or custodian, that suffices for purpose of standing.

24 THE COURT: Right. Let me just observe that
25 about 10 to 15 years ago the -- "show me the original note"

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1 was quite the rage in all kinds of litigation in Bankruptcy
2 Courts. And everybody said, well, you know, there -- with
3 the securitization mania coming out of Wall Street resolved
4 its bundling of paper and sometimes it got a little bit
5 unclear of who was holding the bundle at any particular
6 time, and so this was seized upon as a basis for a lot of
7 things.

8 But in my experience, it all amounted, in most
9 cases, to nothing. Yes, it was a rather poor way to run
10 business. Hopefully, the banking system has corrected
11 itself, but I do not know that it has.

12 But I'm really asked to make a very simple
13 determination, which is who is the holder, the "holder"
14 being a term of law that is defined. And I conclude
15 ultimately that it has to be BONY and admittedly, through
16 servicers and agents, but it has to BONY because (a) it's
17 logical and (b) -- and this is where I'm posing a question
18 to you -- there's nobody else. Nobody else has come
19 forward and it's been a long time. It's been now, what, 15
20 years or something like that. And if somebody else were
21 out there who is in a deficit position of 2.7 million
22 dollars, you'd rather expect that they would be here and
23 say, wait a minute, this got mislaid and I'm the one who
24 really -- you know, we don't see that.

25 What we see is another example of a thing I saw

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1 15, 20 years ago, which is a lot of sort of rushed and
2 substandard paperwork that what somebody who was trying to
3 make into a cause of action. I didn't find a single one of
4 those cases that ever amounted to anything. And I think
5 the other courts in this land, for the most part, have come
6 to the same conclusion, and that's where I think this case
7 is. I think it's pretty clear that BONY is the holder and
8 they're the holder because they have the paperwork and the
9 paperwork is consistent with their argument that they are
10 the holder.

11 Now, you do raise a suspicious anomaly. Why does
12 somebody seek fit to strike out one of these other banks?
13 I don't know the answer to that. Apparently, you don't
14 know it either. But does it amount to something that I
15 find substantial enough to deny status of holder, Mr.
16 Haberbush? The answer is no.

17 In fact, all you have is arguments. You have
18 arguments, but no evidence whatsoever and the argument that
19 you were proposing is a very large issue, which is somebody
20 else is at the -- somebody has got to be the holder. Okay.
21 It can't be, oh, it's a gift. No, that conclusion does not
22 follow under any theory. Somebody is the holder.

23 And so what I have here is evidence to a 99.9
24 percent certitude that it's BONY. You have an argument and
25 no evidence that maybe there's some reason to worry about

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1 this, Judge. Well, you know what? That might have even
2 had some traction ten years ago, but not anymore. So for
3 that reason, I'm not impressed by the argument that they're
4 not the holder.

5 Besides, you've got another problem -- or I
6 should say, Mr. Beier does, and that's the plain preclusion
7 argument. Let's assume for purposes of this discussion
8 that there was, in fact, some real argument here, as
9 opposed to just a Hail May pass. It must have been or
10 should have been raised not once, but twice before and
11 wasn't. My reading of the law is that there's still a
12 doctrine in this country called claim preclusion. What
13 that means is, if you're in a lawsuit with somebody, you
14 need to put everything in front of the court, not just a
15 few things and see how they fly and come back a year later
16 or two years later with another theory and then a third
17 time. No, there is a consequence and it's the claim
18 preclusion document. It's sometimes referred to as *res*
19 *judicata*, but claim preclusion and issue preclusion are all
20 sort of mixed up together and what most of us talk about is
21 collateral estoppel.

22 But we've had occasion in this case to look more
23 carefully at it and I think it's very clear to me that had
24 there been any real substance to this theory, it should
25 have been raised before, but wasn't and a summary judgment

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1 was issued earlier. I think there was a dismissal with
2 prejudice on both occasions. That's a determination of any
3 remaining issue.

4 So even if there were something to your -- I
5 described it as a Hail Mary pass. I could come up with
6 other metaphors. Even if there were something to that, it
7 still doesn't save your case because it should have been
8 raised earlier and it wasn't.

9 And I just don't know what Mr. Beier thinks here.
10 I mean, can he just take the position he doesn't have to do
11 anything to service this loan for 10, 15 years and somehow
12 expect it to come back to him? I mean, I don't know what
13 alternative universe that's springing from, but it doesn't
14 strike me as even passing the most basic test of logic, but
15 again, it's possible that I'm missing something.

16 So Mr. Haberbush, have I responded to your
17 inquiry?

18 MR. HABERBUSH: For the most part you have, Your
19 Honor. There's one thing I think that is the theme that
20 runs throughout these number of years in this dispute and
21 that is, Mr. Beier has been trying through litigation of
22 other methods to figure out exactly who it is he is
23 supposed to be negotiating with and pay and he never did
24 get that answer, and that is why this proof of -- this
25 objection to the proof of claim was brought, and I want to

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1 make that clear on the record. Otherwise, thank you for
2 your well considered decision and the time you have spent
3 on this matter.

4 THE COURT: Well, you're certainly welcome and
5 that's the reason I sit here for those purposes. I'm
6 sorry --

7 MR. BEIER: Your Honor, may I speak?

8 THE COURT: I'm sorry to hear that he's had
9 trouble finding out who to pay. In my experience, most
10 banks if you say, I will pay you, they just simply say,
11 here's the number and I'll take the money, but for some
12 reason that hasn't happened and I don't know why. It's
13 very unfortunate, of course, but we are way, way, way, way
14 down the road now and we're beyond that.

15 What we're talking about is, who gets the
16 remaining money in the Trustee's possession and I don't
17 think there's any question up to the amount of their claim
18 that it should be Bank of New York Mellon.

19 I did start out with another inquiry, which was,
20 is there still money left over after that. I couldn't
21 quite tell because the arithmetic sort of escapes me. What
22 is your answer to that --

23 MR. BEIER: Your Honor, may I make comment to
24 your question?

25 THE COURT: With Mr. Haberbush's consent you may,

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1 yes.

2 MR. HABERBUSH: I have no objection, Your Honor.

3 THE COURT: All right. Go ahead.

4 MR. BEIER: Okay. Your points are extremely
5 valid and I, to this day, don't think that the Court fully
6 understands what we've been trying to accomplish.

7 In the financial crisis of 2007, 2008 Bear
8 Stearns collapsed. This mortgage was caught in that
9 collapse. This is clear to everyone and it was held in the
10 Besolta (phonetic) Trust. During that time, the original
11 investor for that trust was thousands of pension funds and
12 retirement people and other investors and those are the
13 people that the money is owed to, to be frank.

14 After JPMorgan purchased Bear Stearns for about
15 five cents on the dollar, then there was a lot of confusion
16 and that's where you have all the MERS litigation because
17 there was a shell company, MERS, which was -- sounds to not
18 be a lawful way to hold the mortgage. It ducked the titles
19 so you had a lot of title fraud. You had a lot of other
20 issues there.

21 So what did the banks do? So the banks then
22 started to trade the paper around and this is when I
23 coincidentally at the same time was in an unfortunate
24 divorce, which is -- the Court probably doesn't know I have
25 quadruplets and twins, so it's not an easy thing to go

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1 through a divorce with lots of children and during the
2 financial crisis.

3 So when the dust settled and I went to the bank
4 and I said, "Please, let's negotiate so that we can keep
5 the home, keep the kids in the home, we would like to put
6 together an offer," the bank could not introduce me to the
7 noteholder. They literally said, "Please hold," and they
8 put me on hold for over a year.

9 Then when they finally came back they said, "You
10 know what, we're Bank of America. We're now servicing.
11 We're in charge. You don't get to speak to the
12 noteholder." So I went through the process. I acquiesced
13 and the bank said, "You're declined." And I said, "Why am
14 I declined?" and I gave very good offers for modification,
15 very, very good, at one point up to \$25,000 a month
16 because, again, I have a million-and-a-half dollars of
17 equity in the home of my money. It was not like it was 100
18 percent financed home.

19 So the point I'm trying to make to the Court,
20 you're asking, why isn't there another party, and I can
21 answer that question. If you understand banking and
22 finance and Wall Street, the other party was thousands of
23 investors and these investors were told, "There's no money
24 here."

25 And then what happened was the bank, because they

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1 knew they didn't have a secured note, they knew they now
2 had an unsecured note, and because they had an unsecured
3 note they sold that note later in time for a discount, a
4 significant discount. We're estimating about \$42,000 is
5 what somebody bought this \$1,470,000 note for. And I don't
6 know when Aldridge Pite got involved. I don't know if
7 Aldridge Pite is actually the collection firm that bought
8 the note for \$42,000. I don't know if Bank of New York is
9 really involved.

10 We really have these questions. We don't know
11 who bought the note, if it's secured, if it's unsecured.
12 And I understand the Court's logic is, well, nobody else is
13 here today. But my logic is the person that's here today,
14 which is Mr. Delmotte, he did buy a note. I don't know
15 what he paid for it. We estimate maybe \$45,000, but he did
16 buy a note and he's trying to collect 2.7 million dollars
17 on -- and claiming he's secured. And I'm here to tell you,
18 he does not have a proper security.

19 So to make an assumption that because nobody else
20 is here, he now has a proper title, chain of custody to a
21 note that was done in 2005, it's a bit -- I can't find the
22 words right now, Your Honor, so I apologize.

23 Well, the point I'm trying to make is you
24 mentioned that why didn't I try to service the loan. I
25 don't know if it's in these court papers, but I flew to New

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1 York City. I went to Bank of New York Mellon. There was
2 an empty office and they said it was owned by JPMorgan
3 Chase. This was the office on the attempt to foreclose.
4 There was no one in the office. It was vacant. It was a
5 fake address.

6 Then I went to JPMorgan with my checkbook
7 physically. I don't know anybody else who would fly to New
8 York City to get to the bottom of this. So I did make
9 massive efforts to get to the bottom of it. I met with
10 lawyers in Delaware to decide if they should sue in
11 Delaware because these are all Delaware corporations. And
12 all I've ever wanted from the beginning of time was a
13 modification so I could stay in the home.

14 Now, the Bankruptcy Court has -- against my
15 request has sold the home and I understand that and I
16 accept it, but the argument of who is entitled to 2.7
17 million dollars in proceeds is a completely separate issue.
18 And I really ask the Court to consider the following.

19 Prior to the sale of the home, the Court was
20 looking at, okay, this guy is not servicing the debt, the
21 payments are not being made, and I have my arguments of why
22 and I've shared some of those with you, but at the same
23 time, now it's a different argument. Now we have the money
24 in the bank and it's just a matter of who does that money
25 belong to. And I really beg the Court to give us the

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1 opportunity to finally identify the proper chain of custody
2 and the proper noteholder. And if there -- listen, if it
3 comes to terms that they truly own the note and if they did
4 the paperwork properly, then fine. But I think you may
5 find it unsecured. And I'm not an attorney, as you all
6 know, but my understanding is, if it's an unsecured 1.47
7 million-dollar loan, then they wouldn't have right to the
8 proceeds of the sale of the home. They would fall into the
9 jurisdiction of the Bankruptcy Court, however that would
10 fall for any other unsecured loan.

11 THE COURT: Thank you.

12 MR. BEIER: I'm probably leaving a few points
13 out, but again, I'm a bit -- I only had a chance to read
14 the tentative about 30 minutes ago, Your Honor, so I
15 apologize.

16 THE COURT: All right. Understandable and you
17 and Mr. Haberbush can go through it and if I've made a
18 mistake you can appeal me and that's perfectly okay.

19 But there's a couple points, Mr. Beier, I'd like
20 you to think about. Even under the most generous reading
21 of circumstances, as you have laid them out, it's not you
22 who gets the money. It might be under some strained
23 theory, some yet unidentified party. I mean, I'm granting
24 that there's a .5 percent possibility factor, but it's only
25 meant it go to the buyer. So that's problem number one for

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1 you. At most --

2 MR. BEIER: And, Your Honor, I --

3 THE COURT: Hold on.

4 MR. BEIER: -- would -- I would disagree that --

5 THE COURT: I sat here and listened to you. Now
6 you can listen to me.

7 MR. BEIER: Okay.

8 THE COURT: So that's the problem and we don't
9 recognize your ability to speak on some unidentified
10 party's behalf.

11 So under any theory, it's not buyer's -- now,
12 you've introduced the idea, well, maybe it's an unsecured
13 loan. That's rubbish. The note takes with it
14 automatically by law security agreements securing it. So
15 even if the paperwork were infirmed -- and I'm not saying
16 that it is -- it still doesn't end up in your favor because
17 it means that whoever is determined to be the holder, they
18 by law are also the secured party under the deed of trust,
19 so under that additional theory, it does not avail your
20 purposes.

21 Thirdly, as I tried to explain and in the
22 tentative, to the extent there was anything to this
23 argument, it should have been raised before. Not once, but
24 twice before when a court was asked to look into these
25 issues. Your lawyer bravely tries to argue, well, there

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1 was some specific finding and my response to that is, chain
2 of title was clearly an issue, even if the wrong parties
3 were named. So you were obliged to raise at that time any
4 theory that you had. The law does not accept piecemeal
5 litigation. You don't get to try to set a theory, lose;
6 try another set of theories and lose; and try it a third
7 time. If it concerns the same transaction and occurrence,
8 you must bring forward all claims at that time. We do not
9 tolerate piecemeal litigation.

10 So for that additional reason, I don't think you
11 win. So I understand your frustration and I do remember
12 vividly, because I was a newly appointed judge just about
13 the time that this mess first came upon, and the fact that
14 the United States financial system survived it is by the
15 grace of God because it was pretty near fatal (phonetic).
16 An awful lot of banks had a lot of explaining to do. But
17 that's all behind us now and this last remnant of that
18 bygone era I don't think breaks your wake. Very sorry to
19 be the bearer of bad news, but that's my good faith
20 determination how this comes out.

21 You can, of course, as every citizen has a right,
22 to appeal me and I would love to read that some judge
23 thinks somewhere that there really is something to this,
24 but I don't see it.

25 So talk to Mr. Haberbush about it and if you

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1 really think that you've been done wrong, you have your
2 remedies as I've described, but I'm not going to delay the
3 closing of this case any longer. I think it's been -- I'm
4 a little confused here, Mr. Malcolm, as to whether we have
5 a closed case or unadministered assets or what exactly we
6 have here, but I am given to understand that your client,
7 the Trustee, is holding the actual funds. Is that a fair
8 reading?

9 MR. MALCOLM: It is an accurate reading, correct.

10 THE COURT: Okay.

11 MR. BEIER: Your Honor, one point on the
12 additional parties. My mother and father, Gary and
13 Patricia, they loaned money for the home, so they are an
14 additional party with the loan, and they filed a proof of
15 claim, which should be in front of the Court.

16 So you mentioned another party who is claiming
17 and this party is claiming and it's a significant amount of
18 money that they loaned and they are due. And I think that
19 should come in front of the Court and that you're claiming
20 that because no one else was there, even if this bank isn't
21 the right bank --

22 THE COURT: Well, you're crossing your wires
23 here. You're talking about two different things. I'm
24 dealing with an objection to claim 2.1. That's the only
25 thing that I have before me and the only thing my ruling

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1 pertains to. I did not say, nor do I mean to imply, that
2 there aren't other "parties in interest." What I am
3 talking about is there doesn't seem to be another argument
4 to secured status on this note. That's the key issue. And
5 I don't see how your parents can -- are -- claim to be a
6 party to this note, so that is -- sorry to hear for them,
7 but it's irrelevant to my discussion today.

8 I really invite you to talk to Mr. Haberbush on
9 some of these issues. And after your consultation with him
10 if you think that I've made a mistake, by all means, appeal
11 me. But I don't think this claim deserves to drag out any
12 longer, except and unless Mr. Malcolm tells me that the
13 arithmetic says there's still some money here beyond the
14 Bank of New York Mellon.

15 Is that the case?

16 MR. MALCOLM: Your Honor, I believe it is and I
17 believe that we still have a little bit of work to do in
18 the estate to address claims administration issues.

19 THE COURT: All right. Well, that's fine. And
20 in which case, Mr. Beier's point is a valid one. If
21 there's a secured claim in favor of his parents, that needs
22 to be looked into before you simply write a check to Beier
23 on account of his claim of a homestead.

24 What I'm referring to there, Mr. Beier, is you've
25 got a homestead that's against non-voluntary liens, but if

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1 you have encumbered it in favor of your parents, then they
2 trump the homestead. That's how it works.

3 Anything else, gentlemen?

4 MR. MALCOLM: Not here, Your Honor. Thank you.

5 MR. HABERBUSH: This is David Haberbush. Nothing
6 further, Your Honor.

7 MR. DELMOTTE: Joe Delmotte. Nothing further,
8 Your Honor. Thank you.

9 THE COURT: All right. Would you submit a form
10 of order, please? You may make reference to the tentative
11 and even attach it as an exhibit. In case there is an
12 appeal, I'd like to make my colleagues' job easier.

13 MR. DELMOTTE: Will do, Your Honor. Thank you.

14 THE COURT: All right. Mr. Beier, I'm sorry this
15 didn't break your way, but maybe there's the rest of your
16 life to think about and I wish you best of luck with it.

17 MR. BEIER: Your Honor, I appreciate hard work
18 and your detailed tentative and I understand we don't
19 agree, but that doesn't mean we can't wish each other the
20 best and God bless.

21 THE COURT: All right. Very good. And I wish
22 you happy new year and prosperity to you.

23 MR. BEIER: And to you.

24 THE COURT: Okay. I look forward to your --

25 MR. MALCOLM: Thank you, Your Honor.

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1 THE COURT: -- form of order and so I'm going to
2 ask everybody who is not a member of chambers to depart at
3 this point because we're going to have a chambers
4 conference.

5 (End at 11:29 a.m.)

6 * * * * *

7 I certify that the foregoing is a correct
8 transcript from the electronic sound recording of the
9 proceedings in the above-entitled matter.

10

11 *Ruth Ann Hager*

12

Date: 2/5/2024

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RUTH ANN HAGER, C.E.T.**D-641

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